

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Grace Kaoru Black,

10 Plaintiff,

11 v.

12 Commissioner of Social Security
13 Administration,

14 Defendant.

No. CV-23-08618-PCT-DLR

ORDER

15
16 On January 19, 2021, Plaintiff Grace Black filed applications for Social Security
17 Disability Insurance Benefits and Disabled Widow's Benefits. (Administrative Record
18 ("AR.") 80–81.) Black alleges her disability began on January 6, 2020. (AR. 14.) After an
19 administrative hearing, the Administrative Law Judge ("ALJ") found Black not disabled
20 and accordingly issued an unfavorable decision on September 30, 2022. (AR. 27.) The
21 Appeals Council denied review of the decision, making the ALJ's decision the final
22 decision of the Commissioner of the Social Security Administration. (AR. 1.) Black now
23 seeks review of the Commissioner's decision under 42 U.S.C. § 405(g).

24 **I. Legal Standard**

25 The district court reviews only those issues raised by the party challenging the
26 decision. *See Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9th Cir. 2001). The Court may set
27 aside the Commissioner's disability determination only if the determination is not
28 supported by substantial evidence or is based on legal error. *Orn v. Astrue*, 495 F.3d 625,

630 (9th Cir. 2007). The Court will review the Commissioner’s final decision by examining the existing administrative record and asking whether it contains sufficient evidence to support the agency’s factual determinations. 42 U.S.C. § 405(g); *Biestek v. Berryhill*, 587 U.S. 97, 102 (2019). In this context, substantial evidence is “more than a mere scintilla” and means “such evidence as a reasonable mind might accept as adequate to support a conclusion.” *Biestek*, 587 U.S. at 103. This is a highly deferential standard of review. *Valentine v. Comm’r of Soc. Sec.*, 574 F.3d 685, 690 (9th Cir. 2009).

The ALJ uses a five-step process to determine whether a claimant is disabled. 20 C.F.R. § 404.1520(a). The claimant bears the burden of proof for the first four steps, but the burden shifts to the Commissioner at step five. *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1222 (9th Cir. 2009). First, the ALJ determines whether the claimant has engaged in substantial gainful employment. 20 C.F.R. § 404.1520(a)(4)(i). Second, the ALJ determines whether the claimant’s alleged impairment is sufficiently severe as to limit their ability to work. *Id.* § 404.1520(a)(4)(ii). Third, the ALJ considers whether the claimant’s impairment or combination of impairments meets or medically equals an impairment listed in Appendix 1 to Subpart P of 20 C.F.R. Part 404. *Id.* § 404.1520(a)(4)(iii). If so, the claimant then qualifies as disabled. If not, the ALJ moves to the fourth step where he assesses the claimant’s residual functioning capacity (“RFC”) and determines whether the claimant could perform past relevant work. *Id.* § 404.1520(a)(4)(iv). If the claimant is not able to perform past work, then the ALJ proceeds to the fifth and final step: determining whether the claimant can perform any other relevant work in the national economy based on the claimant’s age, education, and work experience. *Id.* § 404.1520(a)(4)(v). If the ALJ determines that the claimant is unable to perform other work, then the claimant is disabled. *Id.*

II. Analysis

Black contends that the ALJ erred (1) when he discounted Black’s symptom testimony and (2) when he rejected Dr. Scott Boggs’ medical opinion.

1 **a. Black’s Symptom Testimony**

2 The ALJ performs a two-step analysis when evaluating a claimant’s pain and
 3 symptom testimony. *Garrison v. Colvin*, 759 F.3d 995, 1014 (9th Cir. 2014). First, the ALJ
 4 must determine whether the claimant has presented objective medical evidence of an
 5 underlying impairment which could reasonably be expected to produce the symptoms
 6 alleged. *Id.* Second, if the claimant satisfies the first step, and there is no evidence of
 7 malingering, then the ALJ can reject the claimant’s testimony only by giving specific,
 8 clear, and convincing reasons. *Id.* at 1015.

9 To weigh a claimant’s credibility, the ALJ may consider ordinary techniques of
 10 credibility evaluation, including the claimant’s reputation for truthfulness, testimony from
 11 physicians about the severity of their symptoms, any inconsistencies in their testimony or
 12 conduct, and any inadequately explained failure to seek treatment or to follow treatment.
 13 *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996); *Burch v. Barnhart*, 400 F.3d 676,
 14 680 (9th Cir. 2005). The ALJ does not have to “clearly link his determination to those
 15 reasons”; rather, he need only provide substantial evidence for rejecting the claimant’s
 16 testimony. *Lewis*, 236 F.3d at 512.

17 At the hearing, Black testified about problems with her lower back, left knee, and
 18 numbness in her feet, which interfered with her ability to walk, sit, stand, and balance. (AR.
 19 45–46.) She also testified about her hand limitations caused by carpal tunnel syndrome.
 20 (AR. 40, 43–44.) Additionally, Black testified to her vision impairment—that she could
 21 not read or drive with her left eye. (AR. 39–40.)

22 The ALJ found that Black satisfied the first prong of the test because her
 23 impairments could reasonably be expected to cause some of her symptoms. (AR. 21.) At
 24 step two, however, the ALJ discounted her testimony about “the intensity, persistence, and
 25 limiting effects of these symptoms” because they “were not entirely consistent with the
 26 medical evidence and other evidence in the record.” (AR. 21–22.)

27 Black contends that the ALJ improperly discounted her testimony by failing “to
 28 explain how one set of findings canceled out the significance of other findings that

1 supported and were consistent with Black's symptom testimony." (Doc. 12 at 10.) The
2 Court disagrees.

3 First, the ALJ reasonably discounted Black's testimony regarding her lower back,
4 left knee, and numbness in her feet. (AR. 22.) The ALJ cited two examinations
5 demonstrating that Black's back was normal. (AR. 1347, 1491.) The ALJ also found that
6 she had normal, gait, posture, movement, and strength. (AR. 837, 849, 856, 1073, 1080,
7 1155, 1323, 1330, 1332, 1342, 1374, 1491.) On the other hand, the ALJ acknowledged that
8 Black suffered from diminished deep tendon reflexes in her lower extremities, reduced
9 sensation, and abnormal balance. (AR. 864, 1088, 1330, 1339, 1342.) He further noted that
10 while the diagnostic images of Black's knee showed narrowing of her joint, her pain was
11 well-managed with medicine and physical therapy. (AR. 867, 1095, 1301.) Black,
12 however, had been discharged from physical therapy after two consecutive no-shows. (AR.
13 1301.) On balance, the ALJ found that this evidence merited limiting her to the light
14 exertional level. (AR. 22.) This analysis and balancing of Black's testimony with medical
15 evidence in the record and with Black's own conduct constitutes specific, clear, and
16 convincing reasons for the ALJ to discount Black's testimony.

17 Second, the ALJ reasonably discounted Black's testimony regarding her hand
18 limitations. The ALJ noted that Black did in fact have moderate to severe bilateral carpal
19 tunnel syndrome but found no evidence in the record that she continued to receive
20 treatment for this impairment after she was discharged from physical therapy in July of
21 2020. (AR. 22, 569.) *See Orn*, 495 F.3d at 636 (An ALJ may consider "unexplained, or
22 inadequately explained, failure to seek treatment" as undercutting symptom testimony.).
23 And subsequent examinations revealed that she had normal sensation and movement of her
24 upper extremities. (AR. 1323, 1491.) Accordingly, the ALJ adequately discounted Black's
25 symptom testimony relating to her hand limitations. (AR. 22.)

26 Third, the ALJ properly considered the medical evidence in the record when
27 evaluating Black's symptom testimony about her vision. While Black did have diabetic
28 retinopathy, the ALJ cited evidence in the record that her vision had improved considerably

1 since getting treatment. (AR. 664, 685, 690, 717, 1296, 878, 1133.) These records of her
 2 vision improvement constitute substantial evidence for the ALJ to discount Black's
 3 testimony. *See Kitchen v. Kijakazi*, 82 F.4th 732, 739 (9th Cir. 2023).

4 Accordingly, the ALJ relied on substantial evidence in discounting Black's
 5 testimony about the intensity, persistence, and limiting effects of her symptoms.

6 **b. Dr. Boggs' Medical Opinion**

7 For claims filed on or after March 27, 2017, the ALJ no longer needs to assign
 8 specific evidentiary weight to any medical opinion. 20 C.F.R. § 416.920c(a). Now, the
 9 regulations require the ALJ to consider all medical opinions and articulate how persuasive
 10 he finds them. *Id.* § 416.920c(b).

11 In determining the persuasiveness of a medical opinion, the ALJ must "explain how
 12 [he] considered the supportability and consistency factors in reaching those findings."
 13 *Woods v. Kijakazi*, 32 F.4th 785, 792 (9th Cir. 2022); 20 C.F.R. § 416.920c(a).
 14 Supportability is the extent to which a medical source supports his medical opinion by
 15 explaining the relevant medical evidence. 20 C.F.R. § 416.920c(c)(1). Consistency refers
 16 to the extent to which a medical opinion is consistent with the evidence from other medical
 17 sources and non-medical sources in the claim. *Id.* § 416.920c(c)(2). The ALJ may also
 18 consider treatment relationship, the doctor's specialization, and whether the source is
 19 familiar with other evidence in the claim. *Id.* § 416.920c(c)(3–5).

20 In March of 2022, Black's podiatrist, Dr. Boggs, completed a medical assessment
 21 of Black's ability to do work-related activities. (AR. 1334–35.) He found that Black had
 22 the following limitations which precluded Black's ability to work an eight-hour work day:
 23 she could sit for more than two but less than three hours; she could lift more than fifteen
 24 pounds but less than twenty; she could stand or walk for more than two hours but less than
 25 three; she could carry more than fifteen pounds but less than twenty; she must alternate
 26 between sitting, standing, and walking every forty-six to sixty minutes; and she needs to
 27 rest twenty minutes to an hour at a time. (AR. 1334–35.) He opined that these limitations
 28 would result in her being moderately off task. (AR. 1334–35.)

1 In assessing Dr. Boggs' medical opinion, the ALJ did not properly explain the
2 supportability factor. The supportability factor contemplates the extent to which the
3 medical source explained his opinion or conclusion by providing or citing objective
4 supporting evidence. *Woods*, 32 F.4th at 791–92. The ALJ cited that Dr. Boggs' restrictions
5 were not supported by his own notes, "which indicated appropriate muscle tone and
6 strength; full range of motion without pain, crepitation, or instability of the bilateral lower
7 extremities; and no evidence of edema, erythema, ecchymosis, open lesions, maceration,
8 or signs of bacterial or fungal infection." (AR. 25.) To bolster this claim, the ALJ cited two
9 exhibits: one from Dr. Boggs' March 2021 exam of Black and a second from Dr. Robert
10 Bazaco's exam of Black in March of 2022. (AR. 25.) Because the supportability factor
11 focuses on how the treating physician's notes support his own assessment, the Court does
12 not examine Dr. Bazaco's findings.

13 Dr. Boggs' notes from the March 2021 exam may have listed several normal
14 findings, but they also showed several abnormalities. For instance, Dr. Boggs noted that
15 "there is pain on palpation to the lateral side of the right foot" and "there is more pain with
16 eversion against resistance and pressure." (AR. 837.) Dr. Boggs also judged that Black had
17 uncontrolled diabetic neuropathy and "other specified disorders of bone, ankles, and
18 foot/ribs." (AR. 837.) Further notes reveal that Dr. Boggs completed another exam in
19 March of 2022—on the same day he completed a medical assessment of Black's ability to
20 work—where he found that Black was "somewhat unstable with ambulation second to
21 sensation and vision" and that her balance was abnormal. (AR. 1330.) Further still, on his
22 medical assessment of Black's ability to work, Dr. Boggs explained "the patient has
23 balance, position complication because of her diabetic neuropathy and loss of feeling in
24 her feet." (AR. 1335.) But the ALJ failed to grapple with those findings. While it's the
25 ALJ's job to weigh the evidence, he cannot cherry-pick evidence to support an unfavorable
26 decision. *Moreno v. Comm'r of Soc. Sec. Admin.*, No. CV-22-00319-PHX-DLR, 2023 WL
27 4926258, at *4 (D. Ariz. Aug. 2, 2023); *Garrison*, 759 F.3d at 1017 n.23.

28 However, the ALJ did properly explain the consistency factor. Proper analysis of

1 the consistency factor requires the ALJ to evaluate the extent to which Dr. Boggs' opinion
2 is consistent with the medical or nonmedical evidence elsewhere in the record. *See* 20
3 C.F.R. § 404.1520c(c)(2). Here, the ALJ commented that Dr. Boggs' opinion "was not
4 consistent with the longitudinal medical evidence of record which typically indicated
5 normal, gait, posture, movement, and strength." (AR. 25.) The ALJ then cited several
6 exhibits: Dr. Bazaco's notes from exams conducted in December 2020, June 2020, and
7 December 2021; Dr. Muhammad Nayer's notes from an exam conducted in January 2020;
8 Dr. Michael Treiman's notes from December 2018; Dr. David Freedman's notes from
9 August 2022; and three sets of Dr. Boggs' notes from various exams conducted between
10 2021 and 2022. (AR. 837, 849, 856, 1073, 1080, 1155, 1323, 1330, 1332, 1342, 1374,
11 1491.) While there was evidence in these exam notes that indicated Black suffered from
12 movement and strength issues in both her upper and lower extremities, these notes also
13 demonstrate several findings that were essentially normal. Under these circumstances, the
14 Court will not disturb the ALJ's inconsistency finding. *Thomas v. Barnhart*, 278 F.3d 947,
15 954 (9th Cir. 2002) (finding that "where the evidence is susceptible to more than one
16 rational interpretation, one of which supports the ALJ's decision, the ALJ's conclusion must
17 be upheld"). Because the ALJ cited evidence of Black's normal gait, posture, strength, and
18 movement, the ALJ met its burden on the consistency factor.

19 While the ALJ did cite substantial evidence for the consistency factor, it failed to
20 do so for the supportability factor. Because the ALJ inadequately addressed the degree to
21 which Dr. Boggs' supported his own opinion in his treatment notes, the Court reverses the
22 ALJ's decision.

23 **III. Remedy and Conclusion**

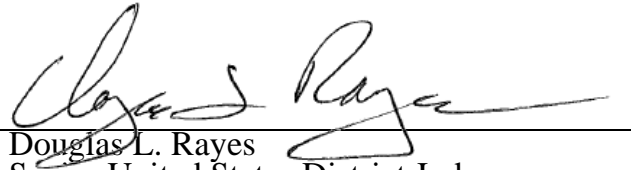
24 Black argues that the Court should remand her claim for payment of benefits. (Doc.
25 12 at 17.) A remand for payment of benefits is a rare exception to the ordinary remand rule.
26 *Leon v. Berryhill*, 880 F.3d 1041, 1044 (9th Cir. 2017). To remand for payment, the court
27 engages in a three-part test where each element must be satisfied: "(1) the record has been
28 fully developed and further administrative proceedings would serve no useful purpose; (2)

1 the ALJ has failed to provide legally sufficient reasons for rejecting evidence . . . ; and (3)
2 if the improperly discredited evidence were credited as true, the ALJ would be required to
3 find the claimant disabled on remand.” *Garrison*, 759 F.3d at 1020. Black falters at the first
4 element: additional proceedings would in fact serve a useful purpose. There are some
5 questions as to the persuasiveness of Dr. Boggs’ assessment, which further proceedings
6 could help resolve.

7 **IT IS ORDERED** that the ALJ’s decision (AR. 54–70) is **REVERSED** and
8 **REMANDED** for further proceedings consistent with this opinion.

9 Dated this 19th day of February, 2025.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


Douglas L. Rayes
Senior United States District Judge